IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1986 of 1997
To
FIRST APPEAL No. 1999 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REVABEN RANCHHODBHAI - Appellant(s)
Versus
SPECIAL LAND ACQUISITON OFFICER & 2 - Defendant(s)

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Appearance :
MR PR THAKKAR for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 04/04/2007

ORAL JUDGMENT

1. All the appeals arise against the Judgement

and the Award passed by the Reference Court dated 10.06.1996 in Land Reference Case No. 295/88 to 308/88, whereby the Reference came to be dismissed by the Reference Court.

2. The facts appear to be that the lands under acquisition were acquired by the Special Land Acquisition Officer, Narmada Canal Unit-V, Vadodara for Jambusar Branch of Narmada Canal. The Notification under Section 4 of the Land Acquisition Act (hereinafter after referred to as 'the Act') was published in the Official Gazette on 09.09.1983. The Special Land Acquisition Officer, after following due procedure, passed the award on 27.06.1986, whereby he awarded Rs. 1300/- per hectare(Rs. 1.30 ps. per sq. mtr.) for irrigated land and Rs.8500/- per hectare(Rs. 0.85 ps. per sq.mtr.) for non-irrigated land. The land owners being dissatisfied with the amount awarded by the Land Acquisition Officer raised the dispute, which ultimately came to be referred to the Reference Court for adjudication. The Reference Court found that on the aspects of yield/crop of the land in question, no sufficient material is produced and even on the aspects of sale instances, the Reference Court found that vendor or the purchaser are not examined and therefore, the Court found that in absence of any cogent material evidence as against the Award of the

Land Acquisition Officer, it cannot be said that the Special Land Acquisition Officer has awarded inadequate compensation and therefore, the references were dismissed. Under these circumstances the present appeals before this Court.

3. I have heard Mr. Thakker for the appellants/claimants. I have also heard Mr. Chhaya, learned AGP for the respondent authorities. I have also considered the record and proceeding as well as the orders, which are permitted to be produced by this Court as per the order passed today in Civil Application No. 3362 of 2007 in First Appeal No. 1991 of 1997.

4. It may be recorded that in Civil Application No. 3362 of 2007, the claimants have principally contended that in respect to the very village Abhol for the acquisition, vide notification under Section 4 of the Act, this Court has fixed the compensation of Rs. 13/- per sq. mtr. for non-irrigated land and Rs.16.25 ps. per sq. mtr. for irrigated land. Therefore, on behalf of the claimants, it has been submitted by Mr. Thakker by relying upon the statement made at page 4 of the application that the claimants are restricting their claim at par with the view taken by the Division Bench of this Court in the case of

the very village decided on 22.07.2003 in First Appeal No. 1330 of 2003 and allied matters.

5. He also submitted that if 10% of the reduction per year from 1989 until the Notification under Section 4 of the Act on 08.09.1983 in the present case is considered, the claimants are agreeable and they would be satisfied.

6. Mr. Chhaya, learned AGP is not in a position to show any distinguishing feature for non-applicability of the view taken by the Division Bench of this Court in the above referred decision in respect to the land situated in the very village Abhol, of course for the Notification under Section 4 of the Act on 25.01.1989.

7. If the evidence is considered, as was produced by the claimants in the proceeding before the Reference Court, it appears that as per the claimants, it was sufficient for establishing that the yield, if considered with the capitalisation method, the market value could be about Rs.6/- per sq. mtr. for non-irrigated land and for irrigated land, in any case, 25% rise in the market value deserves to be given as per the view taken by the Division Bench in the above decision. Therefore, it would be roughly about Rs. 7.50 Ps. per sq. mtr. It does appear from the record that the document

at Exh. 25, which is a Certificate of Padra Taluka Khedut Cooperative Cotton Ginning Society Ltd., is pertaining to the period of 1981-1982 and 1984-1985 and not of the year 1996 as only considered by the Reference Court in the said decision. Even on the aspects of average cultivation, it is shown as that of about 22 to 25 quintal as per the Certificate issued by the Assistant Director of Agriculture dated 11.03.1996. It is true that the said Certificate was of the year 1996. However, on the basis of the average cultivation figure of 1996, the Reference Court could have considered the approximate cultivation during the period of 1983 for the purpose of arriving at the approximate yield of the land in question. If the conservative figure is considered of 20 quintal of cotton of Rs.600/- per quintal as against the conservative price of cotton of Rs.600/- per quintal and if the expenses are considered of Rs.6,000/- per hectare, the Reference Court could have decided the matter on the basis of the capitalised value of the land, in the event the other evidence of sale instances or other reliable evidence for assessing the market value of the land was not available. However, it appears to the Court that it may not be necessary for this Court to re-appreciate and conclude the question on the aspects of yield method in view of the

declaration made on behalf of the claimant of restricting their claim at par with the view taken by the Division Bench in the above referred decision in case of the very village, subject to the reduction @ 10% per year.

8. On the aspects of valuation of the land under the acquisition, as assessed by the Reference Court and its confirmation thereof by the Division Bench to that extent, it appears that there is no dispute that the decision of the Division Bench in the proceedings of First Appeal No.1330 of 2003 was pertaining to similar land of the very village Abhol. The Notification under Section 4 of the Act in the case before the Division Bench was dated 25.01.1989 and it is also not in dispute that the Division Bench in the said decision found that Rs. 1300/- per Area (Rs.13/- per sq.mtr.) was the market value of the land in the year 1989 and 25% increase for irrigated land was given and therefore, the Division Bench found the market value for irrigated land @ Rs. 1625/- per Are (Rs. 16.25 ps per sq. mtr.). Therefore, it appears that as per the view taken by the Division Bench of this Court in the above referred decision for village Abhol for acquisition pursuant to the Notification under Section 4 of the Act dated 25.01.1989, Rs.13.00 per sq. mtr. was found as market value for non-irrigated land and Rs.16.25 per

sq. mtr. was found as market value for irrigated land for village Abhol.

9. It is by now well settled that for arriving at the market value based on the sale instances or based on the price fixed and confirmed by the higher forum, 10% appreciation per year in the market value can be considered. In the same manner for the present case, the reduction in valuation can be considered @ 10% per year from the Notification dated 25.01.1989 to 08.09.1983.

10. Mr. Thakkar, learned counsel appearing for the claimant also conceded before the Court that if 10% reduction is considered as per the settled legal position, then the the claimants are agreeable with the prices fixed by the Division Bench of this Court in respect of the very village as per the above referred decision.

11. Even otherwise also, the principles of application of 10% appreciation can equally apply in the reverse direction for reduction, if the Court is to fix the market value of the land during the earlier period, subject to any other cogent and reliable evidence to the contrary. There is no other evidence on record and the reason being that the sale instances which were produced by the claimant before the Reference Court were only extract

of the index and neither the purchaser nor the vendor were examined. Not only that, but the said sale instances upon which the reliance was placed before the Reference Court was pertaining to the land situated in different village and not the very village Abhol.

12. Under these circumstances, the reduction of 10% per year in the market value can be reasonably considered by this Court in the present case. If the period is counted between 25.01.1989 to 08.09.1983 in the reverse direction, roughly, there was a gap of 5½ years and therefore, the market value of the land deserves to be reduced than the market value fixed on 25.01.1989 by 55%, taking 10% ever year reduction in the reverse direction for the earlier period. Same principle can be applied for irrigated as well as non-irrigated land.

13. As a result thereof, if out of the amount of Rs.13/- per sq. mtr., reduction of 55% equivalent to Rs.7.15ps. per sq.mtr. is excluded, the net valuation would come to Rs.5.85Ps. per sq. mtr. for non-irrigated land. Similarly, if out of Rs.16.25Ps. per sq. mtr., 55% equivalent to Rs.8.93Ps. is excluded, the value would come to Rs.7.32Ps. per sq. mtr. on the date when the notification under Section 4 was published on 08.09.1983.

Therefore, it appears that the market value of the non-irrigated land was Rs.5.85Ps. per sq.mtr. and Rs.7.32Ps. per sq.mtr. and the rounded figure would be Rs.7.30Ps. per sq. mtr. for irrigated land. As against the said market value of the non-irrigated and irrigated land, the Land Acquisition Officer has assessed the value of the land at the rate of Rs.0.85Ps. per sq. mtr. for non-irrigated land. If the amount already paid as per the Award of the Land Acquisition Officer is excluded based on the aforesaid market value, it appears that the appellant would be entitled to the compensation @ Rs.5/- per sq. mtr. for the non-irrigated land and Rs.6/- per sq. mtr. for irrigated land.

14. It may be that while hearing the First Appeal, if the Reference Court has not properly considered certain material or documents on record, and if this Court finds it necessary, it may exercise the judicial discretion for remanding the matter to the Reference Court. However, if the record can be re-appreciated and the decision can be rendered by the Appellate Court, normally, the exercise of the discretion for remand may not be required. Further, it is true that the development of the subsequent order of the Reference Court in respect to the land situated in the very village based on the notification of the year

1989, its confirmation thereof by this Court, are of later date, but they are pending the present First Appeals before this Court. It also appears that acquisition is of the year 1983, the references are of the year 1988, the decision of the Reference Court is of the year 1996, and the appeals are of the year 1997, and therefore, roughly about 19 years time has passed even after the Reference. Therefore, it would be just and proper not to exercise the discretion for remand of the matter, but to decide the appeal after re-appreciation of the evidence and the material available on record so as to put an end to the litigation by curtailing the delay. It may also be recorded that the learned Advocate appearing for both the sides have also contended that it may not be necessary for this Court to remand the matter and the Court may fix the valuation as it may find it proper, considering the facts and circumstances of the case.

15. In view of the above observations and discussions, it is hereby observed and directed that the appellant/orig. Claimant/land owner would be entitled to the additional compensation towards the market value of the land @ Rs.5/- per sq. mtr. for non-irrigated land and Rs.6/- per sq. mtr. for irrigated land.

16. On the aspects of solatium @ 30% is concerned, the law is settled by now and therefore, it is hereby observed and directed that the claimant/appellant/land owner would be entitled to the solatium @ 30% as per Section 32(2) of the Act and additional amount @ 12% p.a. under Section 23(1 A) on the basis of the aforesaid additional compensation @ Rs.5/- per sq.mtr. for non-irrigated land and Rs.6/- per sq. mtr. for irrigated land.

17. It is further observed and directed that the claimant shall also be entitled to the interest @ 9% for the first year and 15% for the subsequent years on the additional amount of compensation, including the solatium and the increase under Section 23(1A) of the Act from the date of taking over of the possession, until the amount is deposited and/or paid, whichever is earlier.

18. Appeals are partly allowed. There shall be cost in proportion to the additional amount ordered in the present appeals. Decree accordingly.

(JAYANT PATEL, J.)

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